Office - Supreme Court, U.S.
FILED
JAN 25 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1956

No. 714

IN THE MATTERS

of

THIRD AVENUE TRANSIT CORPORATION, *et al.*,

Debtors.

A. PHILIP WOOLFSON,

Petitioner,

against

LESTER T. DOYLE, as Trustee in Reorganization, *et al.*,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

A. PHILIP WOOLFSON,
Attorney Pro Se,
Room 4301,
122 East 42nd Street,
New York 17, N. Y.

Adams Press Corp., 82 Beekman Street, N. Y.—Beekman 3-1050-51 110

TABLE OF CONTENTS

PAGE

PETITION FOR WRIT OF CERTIORARI:

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Statute Involved 3

Statement 3

Reasons for Granting the Writ 7

Conclusion 17

APPENDIX:

A—Statutes 19

B—Opinions and Judgment Below 26

C—Conflicting Opinion 34

Cases Cited

Allied Owners Corporation, In re, 74 F. 2d 201 (2 Cir., 1934) 12

Bantam Car Co., In re, 193 F. 2d 616 (3 Cir., 1952) 15

Case v. Los Angeles Lumber Products Co., 308 U. S. 114, 60 S. Ct. 258 (1939) 10fn

Herbert V. Apartments Corporation v. Mortgage Guarantee Co., 98 F. 2d 662 (3 Cir., 1938) 15

Kenilworth Bldg. Corporation, In re, 105 F. 2d 673 (7 Cir., 1939) 7, 8, 11

National Realty Trust, In re, 167 F. 2d 440 (7 Cir., 1948) 14

PAGE

333 No. Michigan Ave. Bldg. Corporation, In re, 84 F. 2d 936 (7 Cir., 1936) 9

Texas Hotel Securities Corp. v. Waco Development Co., 87 F. 2d 395 (5 Cir., 1936) 9, 10

Statutes Cited

11 U. S. C. (Bankruptcy Act):

§77B 8, 12fn
§77B(f) 10fn
§§101 et seq. 2
§171 14
§179 ..... 9fn
§198 11
§206 14
§224(4) 13fn
§§501 et seq. 2

28 U. S. C. §1254(1) 2

Rules Cited

Rule X-14(c) (Bankruptcy) 3fn

Rule X-14(d) (Bankruptcy) 4fn

Rule X-18 (Bankruptcy) 2, 15

IN THE

Supreme Court of the United States

OCTOBER TERM 1956

No.

In the Matters

of

THIRD AVENUE TRANSIT CORPORATION, *et al.*,

Debtors.

A. PHILIP WOOLFSON,

Petitioner,

—against—

LESTER T. DOYLE, AS TRUSTEE IN REORGANIZATION, *et al.*,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner herein prays that a writ of certiorari issue to review that part of the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on November 30, 1956, which affirmed orders of the District Court for the Southern District of New York approving a plan of reorganization and confirming the plan of reorganization.

Opinions Below

No opinion of the District Court was entered on confirmation of the plan. A memorandum opinion on the approval of the plan was rendered by the District Court.* The opinion of the United States Court of Appeal is not yet reported and is printed in Appendix B hereto, *infra*, p. 26.

Jurisdiction

The judgment of the Court of Appeals was entered on November 30, 1956, Appendix B, *infra*, p. 26. The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254 (1).

Questions Presented

1. Whether an order confirming a plan of reorganization under Chapter X of the Bankruptcy Act is valid where the plan has not been accepted by adjustment bondholders holding two-thirds in amount of the allowed claims *filed by the indenture trustee* in that class of creditors.

2. Whether the failure of the trustee of debtor to transmit to stockholders and creditors notice of a hearing on approval of a completely new plan of reorganization pursuant to the requirements of Chapter X of the Bankruptcy Act and Rule X-18 of the Bankruptcy rules of the District Court for the Southern District of New York, is not violative of due process.

---

* See "Opinion approving the Joint Plan of Reorganization" in Record document entitled "Information for Voting on Joint Plan of Reorganization", dated August 14, 1956, p. 7.

Statute Involved

The statutory provisions involved are Sections 101, *et seq.*, 169, 171, 179, 198, 221 of Chapter X of the Bankruptcy Act, 52 Stat. 840, 11 U. S. C. A., Sections 501, *et seq.*, 569, 571, 579, 598, 621. They are printed in Appendix A, *infra*, pp. 19-23.

Statement

An involuntary petition in bankruptcy was filed against Third Avenue Transit Corporation on October 25, 1948. On March 23, 1950, pursuant to order of the District Court entered November 30, 1949[1] the indenture trustee under the Third Avenue Railway Company Adjustment Mortgage Income Bonds filed verified proof of claim for $22,536,000

---

[1] Paragraph (4) of that order, which conforms with the requirements of Rule X-14 (c) of the Bankruptcy Rules of the Southern District of New York, provided as follows:

> "(4) Proofs of claim by Indenture Trustees pursuant to Section 198 of the Bankruptcy Act shall be filed in writing on or prior to March 28, 1950 and verified by the Indenture Trustees and have annexed thereto a copy of the respective trust indentures and of all supplements thereto. Such proofs shall state the amount of securities then outstanding under the indentures and supplements thereto, and the amount of cash and securities, if any, held for account of the trusts. The amount of the claims filed by the Indenture Trustees shall be allowed only to the extent that such claims exceed the amount of such securities owned by the debtors and the amount of such securities on which proofs of claim are filed by the holders thereof and are allowed. The Indenture Trustees shall also file a verified statement containing a list of the names and addresses of security holders under said indentures together with the amounts held by each insofar as the same shall be known to them."

principal amount of adjustment mortgage bonds.[2] [3] No objection was thereafter filed to the proof of claim filed by the indenture trustee.[4]

---

[2] Paragraphs 1, 3 and 4 of that proof of claim are as follows:

> "1. That Chemical Bank & Trust Company is the successor Trustee under Third Avenue Railway Company Adjustment Income Mortgage dated December 20, 1911, as supplemented and amended (hereinafter called the Adjustment Income Mortgage), executed and delivered by Third Avenue Railway Company to United States Mortgage and Trust Company, as Trustee, to secure an issue of Adjustment Mortgage Fifty-Year Five Per Cent. Income Bonds (hereinafter called the Adjustment Mortgage Bonds) of Third Avenue Railway Company; that the obligations of Third Avenue Railway Company in respect of the Adjustment Mortgage Bonds and under the Adjustment Income Mortgage was expressly assumed by Third Avenue Transit Corporation, one of the Debtors herein, by an Indenture dated as of July 1, 1942."
>
> "3. That the principal amount of the Adjustment Mortgage Bonds outstanding under the Adjustment Income Mortgage, as shown by the records of Chemical Bank & Trust Company, as Trustee thereunder, is $22,536,000."
>
> "4. That at the maturity of the Adjustment Mortgage Bonds, cumulative interest will be due and payable thereon as provided herein; as of March 1, 1950, cumulative interest accrued and unpaid on said bonds was in the amount of $23,343,840."

[3] The total amount of adjustment bonds outstanding in the hands of the public amounted to $22,215,900. Adjustment bonds repurchased and held in the Company's Treasury amounted to $320,100. The Company had outstanding in addition $14,830,550 of First Mortgage Bonds due in 1960, and 166,916 shares of no par Common stock.

[4] Rule X-14 (d) of the Bankruptcy Rules of the Southern District of New York provides with respect to allowance of claims as follows:

> "Every claim or interest for which a proof of claim or interest has been filed shall be deemed to be allowed until written objection is filed as provided herein."

On October 8, 1956 the District Court confirmed a reorganization plan for debtor although only $13,328,000 out of a total of $22,215,000 of the outstanding claims of adjustment bondholders (or 60 per cent) were voted for acceptance of the plan.[5] The District Court in fixing a date for the hearing on confirmation[6] had accepted the affidavit[7] by the Trustee of debtor that since $15,893,000 had voted on the plan and $13,328,000 had voted to accept, that the plan had been accepted by or on behalf of adjustment bondholders holding the required two-thirds in amount of the claims filed and allowed in that class.[8]

The reorganization plan confirmed by order of the District Court on October 8, 1956 had been approved by the District Court on July 24, 1956 at a hearing without notice to the debtor's stockholders and other interested parties.[9]

---

[5] For the purposes of the plan and its acceptance the holders of the adjustment mortgage income bonds constituted a separate class pursuant to the order of the District Court of July 26, 1956 approving the Joint Plan of Reorganization (R., p. A 11). (All "R" references are to pages of the Record designated "Joint Appendix of A. Philip Woolfson, Appellant and Lester T. Doyle as Trustee in Reorganization, Appellee.")

[6] The conditions precedent to a hearing on confirmation of a reorganization plan in Chapter X proceedings are stated in Section 179 of the Bankruptcy Act (11 U. S. C. A. 579). Appendix A, *infra*, p. 18.

[7] R., p. A 23 and R., pp. A 390-391.

[8] $6,322,900 of adjustment bonds did not vote on the plan, although in a letter dated August 14, 1956 addressed to the adjustment bondholders by the trustee, they were advised that if the reorganization plan was to be taken advantage of "it is necessary that you act promptly and cast your ballot to accept the Joint Plan without delay."

[9] Petitioner is a beneficial owner of the adjustment bonds and common stock of debtor (since January, 1950) and a stockholder of record (since July, 1956). The securities of which petitioner is the beneficial owner have at all times been held by the New York Stock Exchange firm of Butler, Herrick & Marshall, 20 Broad Street, New York City.

This plan was the third reorganization plan filed by the Trustee, the first having been proposed in November, 1952, and a second plan in June, 1955.[10] This third plan[11] of reorganization differed completely from the previously proposed plans of reorganization since it involved the purchase of the debtor by another New York bus company, Fifth Avenue Coach Lines, Inc. and a completely different treatment of the claims of the security holders of debtor.[12] Notice of hearing on the Trustee's first plan of November, 1952 and of his second plan of July, 1955 had been given by the Trustee to the stockholders and creditors. The hearing before the District Court with respect to the completely new reorganization plan approved by it on July 24, 1956 (and thereafter confirmed) was held without notice to stockholders and adjustment bondholders. The Trustee did not transmit a copy or an outline of the new reorganization plan to all of the parties affected by the plan.[13]

Petitioner on August 15, 1956 filed a notice of appeal from the District Court's order of July 26, 1956 approving the Joint Plan of Reorganization and on October 10, 1956 filed a notice of appeal from the District Court's order of

---

[10] R., p. A 8.

[11] The Trustee's plan, designated as the Joint Plan of Reorganization was the plan of a committee of adjustment bondholders as amended on June 26, 1956 which was adopted by the Trustee after withdrawal of his Second Amended Plan of Reorganization, as modified (R., p. A 10).

[12] R., p. A 10.

[13] The record is barren of any affidavit by the Trustee of debtor of notice of the hearing on the new plan to stockholders and creditors of the debtor. Moreover, in the order of the District Court approving the plan of reorganization the Court refers specifically to a "hearing" (R., p. A 10) and omits any reference to a "hearing on notice."

October 8, 1956 confirming the Joint Plan of Reorganization.[14]

The Court below affirmed the orders of the District Court approving the plan of reorganization and confirming the plan of reorganization on the following grounds:

1. That transmittal of notice of the hearing on approval of the instant plan to stockholders and creditors was not required since the statute contemplates a continuous process and "* * * the hearings may be adjourned from time to time without further notice other than the announcement of such adjournment in open court."

2. That the Bankruptcy Act did not require as a condition precedent to confirmation of the instant reorganization plan that two-thirds in amount of the adjustment bonds outstanding be voted for acceptance since "if only a few creditors are available and interested enough to vote, they should determine acceptance or rejection of the plan by their class."

Reasons for Granting the Writ

1. The decision of the Court below in the instant case with respect to the acceptances by the adjustment bondholders required to confirm the reorganization plan is directly in conflict with the decision of the Seventh Circuit Court of Appeals in "*In re Kenilworth Bldg. Corporation* (165 F. 2d 673)." (Appendix C, *infra*, p. 34)

In the instant case the Court of Appeals decided that acceptance of the reorganization plan by the holders of two-thirds of the entire issue of the adjustment bonds was not required for confirmation of the plan. Judge MEDINA, writ-

[14] Petitioner on October 8, 1956 had also filed a notice of appeal from the District Court's order denying motion by petitioner to reopen the question of insolvency of debtor (R., p. A 33; R., p. A 43).

ing for the Court below, defined the position of the Court as follows (Appendix B, *infra*, p. 30):

> "The question is simply whether acceptance by the holders of two-thirds of the entire issue is required or only by two-thirds of the amount claimed and allowed. * * * We think it not unreasonable to provide that if only a few creditors are available and interested enough to vote, they should determine acceptance or rejection of the Plan by their class. In any event, we are not at liberty to vary the requirement of the Act."[14a]

In the instant case it was a Trustee who filed the claims on behalf of the adjustment bondholders and the claims so filed were allowed (notes 1 and 2, page 3-4, *supra*). The Court of Appeals and the District Judge, as the foregoing indicates, disregarded the claims theretofore *filed by the indenture trustee and allowed,* and considered only as claims allowed those who voted.

In the *Kenilworth* case the reorganization plan was confirmed by the District Court despite the fact that consents to the plan represented only $47,800 worth of claims out of a total of $112,000 on the outstanding issue. The District Court in confirming the plan considered only the claims filed by the bondholders' committee or by the individual claimants and disregarded all the claims filed by the *trustee as here, and allowed by the Court.* The Court of Appeals in the *Kenilworth* case concluded that Sec. 77B requires the claims filed by the trustee and allowed, to be considered in determining the amount of the claims, two-thirds of which had to be represented by creditors assenting to the plan.

[14a] In computing the necessary majority the act does not require a *second* filing by the *individual* bondholders at the time of the voting (see p. 12 *infra*).

In the *Kenilworth* case it was the Court of Appeals' opinion that

> "under Section 77B the total amount of claims, two-thirds of which must be represented by assenting creditors, *includes the claims filed by an indenture trustee which are allowed.* * * * For the purpose of filing written acceptances no distinction is made between claims filed by an indenture trustee and allowed and claims filed by individual creditors or by someone expressly authorized to file for them. The only restriction placed upon claims is that they be claims of creditors and that they be allowed. If a claim has been filed and allowed, nothing in the Act authorizes the striking of such claim from the amount of claims to be considered for purposes of acceptance of the plan. In short, the total amount of all claims which have been allowed constitutes the amount of claims, two-thirds of which must be voted for acceptance."

2. The decision of the Court below in the instant case that a two-thirds vote of each class of creditors is not required to confirm a reorganization plan is directly in conflict with the construction of the applicable statute[15] by the Seventh Circuit Court of Appeals in *In re 333 No. Michigan Ave. Bldg. Corp.* (84 F. 2d 936) and by the Fifth Circuit Court of Appeals in *Texas Hotel Securities Corp.* v. *Waco Development Co.* (87 F. 2d 395).

The Seventh Circuit Court of Appeals, in construing the statutory requirements for acceptance of a reorganization plan, held in *In re 333 No. Michigan Ave. Bldg. Corp.* (84 F. 2d 936) as follows:

> "Under Section 77B the rights of all claimants and creditors are entitled to the same protection, but they

[15] Sec. 179 of the Bankruptcy Act, 11 U. S. C. A., Sec. 579 (Appendix A, *infra*, p. 20).

> may be divided into classes, as was done in this proceeding. That law requires a two-thirds vote of each class before a plan can be confirmed. (*Continental Illinois Nat. Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648, 55 S. Ct. 595, 79 L. Ed. 1110; *Louisville Joint Stock Land Bank* v. *Radford*, 294 U. S. 555, 55 S. Ct. 854, 79 L. Ed. 1593; *Cumberland Glass Manufacturing Co.* v. *De Witt*, 237 U. S. 447, 37 S. Ct. 636, 59 L. Ed. 1042). We find no expression of the Supreme Court which is at variance with this interpretation."[16]

The Fifth Circuit Court of Appeals in *Texas Hotel Securities Corp.* v. *Waco Development Co.* (87 F. 2d 395), construed the applicable statutory provision as follows:

> "The voting class embraces the holders of allowed claims without requirement as to when or how they became holders. * * * Section 77B, in order to impose a plan on dissenters requires an acceptance by two-thirds in amount of the affected class of creditors. Less than two-thirds cannot become two-thirds because some of the dissenters may be badly disposed. It is the consent of the specified majority that by a sort of democratic rule is made to be a consent of all which enables this Act to control the will of dissenting minorities."

3. The decision of the Court below affirming the District Court's Order confirming the reorganization plan is believed to be erroneous and the conflicting decision of the

---

[16] Compare also *Case* v. *Los Angeles Lumber Products Co.* (308 U. S. 114) where this Court stated: "It is clear from a reading of Section 77B (f) that the Congress has required both that the required percentages of each class of security holders approve the plan and that the plan be found to be fair and equitable."

Seventh Circuit Court of Appeals in *In re Kenilworth Bldg. Corporation, supra,* correct. That the decision of the Court below is erroneous can be demonstrated algebraically as follows:

Let a = aggregate of claims filed and allowed
b = allowed claims voting on the plan
c = allowed claims not voting on the plan

$a = b + c$

Let x = allowed claims voting for the plan
y = allowed claims voting against the plan

$b = x + y$

The correct formula for computing the statutory majority of acceptances required before a plan can be confirmed is $\frac{x}{a}$ and not $\frac{x}{b}$.[17] In the instant case $\frac{x}{a} = \frac{13,328,000}{22,215,900} =$ 60%.[18]

4. The construction of Section 198 of the Bankruptcy Act (11 U. S. C. A. Sec. 598), Appendix A, *infra*, p. 19, by

---

[17] The vice of the formula $\frac{x}{b}$ is that under such a formula the two-thirds requirement for acceptance by two-thirds of each class of creditors would become meaningless since the percentage of claims filed and allowed is no longer a definite and certain amount. It is conceivable that under such a formula a minority of creditors may be enabled to determine the fate of the majority of creditors of that class.

[18] The value of "a", i.e., the aggregate of claims filed and allowed of each class of creditors eligible to vote on acceptance of a reorganization plan is determined prior to submission of the plan to the security holders affected. (See 174 of the Bankruptcy Act, 11 U. S. C. A. §574, Appendix A, *infra*, p. 20.)

the Court below[19] is in direct conflict with the principle enunciated by an Appeals Court of the same Circuit in 1943. The Court at that time recognized that the existence of an indenture trustee did not modify the requirement of a two-thirds vote by each class of creditors for acceptance of a reorganization plan. In *In re Allied Owners Corporation* (174 F. 2d 201), the Court stated:

> "Section 77B[20] is concerned with corporate reorganization. Its principal purpose was to provide relief against recalcitrant minority creditors or debtors unable to reach all creditors. * * * The law requires that a plan of reorganization be accepted by two-thirds of each class of creditors. If the trustee of a mortgage were to vote for all the bondholders on every plan which affected the security distinguishing the bond issue and making it a separate class, the two-thirds

---

[19] The finding of the Court below is as follows (Appendix B, *infra*, p. 33):

> "And if Section 179 were thought to leave any doubt as to what that requirement is, such doubt would be dispelled by Section 198 (11 U. S. C. A. Sec. 598) which provides: 'An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: Provided, however, that in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included.'"

The Court below obviously confused an indenture trustee's right to file claims which by the allowance thereof entitled the holders to vote with the strictures upon the right of the trustee to vote the allowed claims (see note 4 *supra*).

[20] While various substantial changes in the provisions of §77B were made in Chapter X the requirements of notice of plan hearings and the majority required for acceptance of a plan as conditions precedent for confirmation of a plan of reorganization remained unaltered (see Appendix A, *infra*, pp. 23-25).

requirement would be meaningless and one of the purposes of the law would be defeated. Congress, in legislating, did not place a trustee in the position of censor of plans of reorganization."[21]

5. The decision below turns squarely and solely on construction of the applicable federal statutes as matter of law. Clearly the question above presented is of importance in the administration of the federal bankruptcy laws. The decision of the Court below is so inconsistent in theory as to leave the intent and meaning of the applicable statute in a state of confusion. Settlement of the question by this Court is plainly in the public interest since it is likely to be presented in almost every bankruptcy proceeding involving corporations which have obligations outstanding under indentures and involving indenture trustees. If the decision of the Court below were permitted to stand, it would mean that minorities would not receive the Court's protection in its application of the law of the land as presented in Chapter X of the Bankruptcy Act. It is of particular importance that this question be settled in this Circuit, since New York is the financial center of the world and the question affects the many thousands of companies whose securities are traded in this center, as well as the many other thousands of small corporations whose obligations are not publicly traded.

6. The decision of the Court below holding that specific notice to stockholders and creditors of debtor Third Avenue Transit Corporation was not required to be given of

---

[21] Note that Sec. 224 (4) of the Bankruptcy Act (11 U. S. C. A. 624 (4)) provides specifically that distribution under the plan after confirmation shall be made to creditors and stockholders (a) proof of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession as fixed claims or stock, liquidated in amount and not disputed.

the hearing on June 26, 1956 on approval of a completely new plan of reorganization is believed to be erroneous and in direct conflict with the statutory requirements of notice under Chapter X of the Bankruptcy Act and the procedural requirements of the bankruptcy rules of the District Court for the Southern District of New York.

The provisions of the Bankruptcy Act require that the stockholders and adjustment bondholders of debtor have

1) The right to be heard on all reorganization matters:

> "The debtor, the indenture trustee and any creditor or stockholder of the debtor shall have the right to be heard in all matters arising in a proceeding under this Chapter" (Section 206 of the Bankruptcy Act, 11 U. S. C. A., §606),

and

2) The right to be given notice of hearings on reorganization plans:

> "Notice of the time of any hearing as provided in Section 569 or Section 570 of this title, shall be given to the debtor, the creditors and stockholders, the indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission and such other persons as the Court may designate * * *" (Section 171 of the Bankruptcy Act, 11 U. S. C. A., §571).

The construction of the statutory requirements for notice of plan hearings is believed to be correctly enunciated by the Seventh Circuit in *In re National Realty Trust* (167 F. 2d 440) where the Court stated:

> "The fact that the Court is given exclusive jurisdiction of the debtor and the property does not give it power to enter an order affecting rights of interested parties, including stockholders, without notice and a hearing. In fact a reading of the Reorganization Act,

particularly the Chandler Act, shows the meticulous care which Congress exercised in requiring that notice be given at every step of the proceedings wherein the rights of interested parties might be affected. See Secs. 516(3), 561, 567(6), 571, 590, 597 and 622."

In *In re Bantam Car Co.* (Third Circuit), 193 F. 2d 616:

> "Unless notice is given as required by the Bankruptcy Act, the Court lacks the power to enter a valid order in the premises. * * * Much more than an abuse of legal discretion is involved for the Trial Court proceeded under an erroneous conception of the requirements of notice."

And in *Herbert V. Apartments Corporation* v. *Mortgage Guarantee Co.* (Third Circuit), 98 F. 2d 662:

> "It is our contention that whatever may be the agreement between individuals as to representation in proceedings in the case at bar, notice, as the various steps of the proceeding may require, must be sent to all who have the status of creditors and to the certificate holders since they have such status."

7. The form and manner in which notice of hearings for approval of a plan is to be given in proceedings under Chapter X in the District Court for the Southern District of New York is spelled out in Rule X-18 of the Bankruptcy Rules for that Court as follows:

> "Notice of a hearing under Section 169 or Section 170 of the Act shall be given by mail and shall be accompanied by a copy of the plan filed by the debtor in possession, or examiner, if any, or the Trustee."

It is not open to question that the stockholders and creditors of debtor did not receive a copy of the new re-

organization plan approved at the hearing on June 26, 1956, although they had received the original plan of November 26, 1952, as well as the Amended Plan of June, 1955.[22]

Since the new plan involved the purchase of the debtor by another transit company, and was a completely different plan from those previously submitted by the Trustee, the Court below is believed to have been in error in holding that the District Court had discretion to disregard the notice requirements of the Bankruptcy Act and the Bankruptcy Rules of the District Court.

8. The decision of the Court below in affirming the confirmation of a reorganization plan which has not been accepted or approved as required by statute and orderly procedure has sanctioned such a serious departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.[23]

---

[22] In submitting the original plan in November, 1952 the Trustee stated that "Whenever notice is to be given under the Plan, the Court shall designate the time within which, the persons to whom, and the form and manner in which such notice shall be given. Unless otherwise specified by the Court, all such notices shall be given by the Trustee."

[23] On December 17, 1956 an order of consummation of the plan was entered by the District Court. The plan has not been substantially consummated as indicated in the following statements appearing the consummation order:

> "* * * WHEREAS, the Joint Plan provides for the distribution of (a) approximately $659,000 in cash and 2,848 shares of Capital Stock of FAC (Fifth Avenue Coach Lines, Inc.) to unsecured creditors and certain partially secured tort creditors (all of whom are hereinafter referred to as 'unsecured creditors');

(Continued on following page)

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

A. PHILIP WOOLFSON,
Attorney Pro Se.

Dated: January 25, 1957.

(Continued from preceding page)

(b) 333,240 shares of the Capital Stock of FAC to the holders of Third Avenue Railway Company Adjustment Income 5% Gold Bonds due 1960 (herein referred to as 'Adjustment Bonds'); and (c) $8,528,000 principal amount of bonds issued by Surface (hereinafter referred to as the 'New Bonds') together with $6,287,422 in cash to the holders of Third Avenue Railway Company First Refunding Mortgage 4% Gold Bonds due 1960 (herein referred to as 'Refunding Bonds'); and

* * *

WHEREAS, Mr. Woolfson has no right to appeal from the decision of the Court of Appeals but can petition the Supreme Court for a writ of certiorari which, if granted, would permit him to appeal to that court; and

WHEREAS, counsel for the Reorganization Trustee and counsel for FAC believe that if Mr. Woolfson petitions for a writ of certiorari, it will not be granted, and even if it should be granted, that it is extremely unlikely that the decision of the Court of Appeals would be reversed; and

* * *

WHEREAS, FAC and the Lending Banks do not believe said $4,881,090 and said shares of the Capital Stock of FAC should be distributed to the unsecured creditors and bondholders until the possibility of a reversal of the Confirmation Order ceases to exist; * * *."